

ELECTRONICALLY FILED  
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Counsel for the Official Committee Of  
Equity Security Holders Of USA Capital First Trust Deed Fund, LLC

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEVADA**

In re: ) BK-S-06-10725-LBR  
USA COMMERCIAL MORTGAGE COMPANY, ) Chapter 11  
Debtor. )

In re: ) BK-S-06-10726-LBR  
USA CAPITAL REALTY ADVISORS, LLC, ) Chapter 11  
Debtor. )

In re: ) BK-S-06-10727-LBR  
USA CAPITAL DIVERSIFIED TRUST DEED FUND, LLC, ) Chapter 11  
Debtor. )

In re: ) BK-S-06-10728-LBR  
USA CAPITAL FIRST TRUST DEED FUND, LLC, ) Chapter 11  
Debtor. )

In re: ) BK-S-06-10729-LBR  
USA SECURITIES, LLC, ) Chapter 11  
Debtor. )

Affects )

- ☐ All Debtors )  
☒ USA Commercial Mortgage Co. )  
☐ USA Securities, LLC )  
☐ USA Capital Realty Advisors, LLC )  
☐ USA Capital Diversified Trust Deed )  
☒ USA First Trust Deed Fund, LLC )

Date: May 31, 2007  
Time: 9:30 a.m.

**DECLARATION OF MATTHEW KVARDA IN SUPPORT OF MOTION FOR ORDER  
APPROVING STIPULATION BETWEEN THE USACM LIQUIDATING TRUST AND USA  
CAPITAL FIRST TRUST DEED FUND, LLC ON OVERBID ALLOCATION AND PLAN  
COMPROMISE PURSUANT TO FEDERAL RULE OF BANKRUPTCY PROCEDURE 9019(a)  
(AFFECTS DEBTORS USA COMMERCIAL MORTGAGE COMPANY AND USA CAPITAL  
FIRST TRUST DEED FUND, LLC)**

1 I, Matthew Kvarda, declare as follows:

2 1. I am a managing director of Alvarez & Marsal, LLC, financial and real  
3 estate advisors to the Official Committee of Equity Security Holders of USA Capital First Trust  
4 Deed Fund, LLC (the "FTDF Committee"). I submit this Declaration in support of the "Motion  
5 For Order Approving Stipulation Between The USACM Liquidating Trust And USA Capital First  
6 Trust Deed Fund, LLC On Overbid Allocation And Plan Compromise Pursuant To Federal Rule  
7 Of Bankruptcy Procedure 9019(A) (Affects Debtors USA Commercial Mortgage Company And  
8 USA Capital First Trust Deed Fund, LLC" (the "Motion")<sup>1</sup> filed by the FTDF Committee and the  
9 USACM Liquidating Trust (the "Trust").

10 2. The following facts are personally known to me and/or based on my  
11 personal observations. If called to testify thereto, I could and would do so, under oath.

12 3. In connection with the above-captioned cases (the "Chapter 11 Cases"), I  
13 and the members of the engagement team have worked closely with the members of the FTDF  
14 Committee and its other professionals regarding the development of a workable exit strategy which  
15 maximized the potential return to investors in USA Capital First Trust Deed Fund, LLC (the  
16 "FTDF"). These efforts included assisting in the decision to market the FTDF loan portfolio,  
17 location of a stalking horse buyer, and the negotiation of the stalking horse sale agreement with  
18 SPCP Group, LLC and the executed sale agreement with Compass Partners, LLC ("Compass"). I  
19 participated at the Auction and have been integrally involved in the dispute with the Trust  
20 (successor in interest to the USACM Committee) over the allocation of the \$9.5 million in overbid  
21 sale proceeds between FTDF and the Trust.

22 4. I also assisted in the formulation of the "Debtors' Third Amended Joint  
23 Chapter 11 Plan of Reorganization" (the "Plan"), which was confirmed by the Bankruptcy Court at  
24 hearings held in December 2006. I assisted in the negotiation of the Plan Compromises that are  
25 the subject of the Motion.  
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<sup>1</sup> Capitalized terms not otherwise defined herein have the meaning set forth in the Motion.

5. I worked with counsel to the FTDF Committee to prepare several settlement proposals that were made to the Trust to resolve the disputes regarding the allocation of the Net Overbid Proceeds and the Plan Compromises. I also reviewed the counterproposals from the Trust on these disputes.

6. On April 25, 2007, I participated at an informal settlement meeting with the Trustee of the Trust and counsel for Trust as well as counsel for the FTDF Committee. After several hours of negotiation, the parties reached the settlement contained in the Stipulation attached as Exhibit "A" to the Motion.

7. The Stipulation is in the best interests of the FTDF estate. The Stipulation is an agreement that reflects the terms and spirit of the Plan Compromises that the FTDF and USACM constituencies voted to approve as part of their votes in favor of the Plan. Furthermore, the resolution of the disputes regarding the Net Overbid Proceeds is a fair allocation of the sale proceeds from the Compass Sale. In addition, the estates will save the significant cost and expense of litigating the matters settled pursuant to the Stipulation, including the disputed Plan Compromises. Any litigation regarding the Net Over bid Proceeds and the Plan Compromises is certain to include protracted discovery efforts as well as costly trial preparation. Further, the FTDF estate as well as the FTDF members, in particular, will benefit from the receipt of their allocated share of the Net Overbid Proceeds without further delay. The settlement contained in the Stipulation is a fair resolution that will benefit the FTDF estate.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 7<sup>th</sup> day of May, 2007, at Los Angeles, California.

  
MATTHEW KVARDA

Alvarez & Marsal, LLC  
Financial and real estate advisor to the Official  
Committee of Equity Security Holders of USA  
Capital First Trust Deed Fund, LLC